

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of:

Terry D. Perkinson

Examiner:

McNally, Michael S.

Serial No. 10/804,832

Art Unit: 2136

Filing Date: March 17, 2004

Attorney Docket No.: 10041.000100

Title: Method and Apparatus for a Hybrid Network Service

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Commissioner of Patents

P.O. Box 1450

Alexandria, VA 22313-1450

**APPEAL BRIEF FILED UNDER 37 C.F.R. § 41.37**

Sir:

A Notice of Appeal was filed on October 28, 2008 for the above-referenced application. This submission is an Appeal Brief in connection with that Notice of Appeal.

## I. REAL PARTY IN INTEREST

On information and belief, the real party in interest is Riavo Systems, Inc., a Delaware corporation, having a place of business at 411 Taggart Court, Roseville, California 95678.

## II. RELATED APPEALS AND INTERFERENCES

On information and belief, there are no appeals, interferences, or judicial proceedings known to the appellant, the appellant's legal representative, or assignee which may be related to, directly affect or be directly affected by or have a bearing on the Board of Patent Appeals and Interferences (the "Board") decision in the pending appeal.

## III. STATUS OF CLAIMS

A. Total Claims: 1-28

B. Current Status of Claims:

1. Claims canceled: 6 and 10
2. Claims withdrawn: none
3. Claims pending: 1-5, 7-9, and 11-28
4. Claims allowed: none
5. Claims rejected: 1-5, 7-9, and 11-28
6. Claims objected to: 12 (the "second" claim 12)

C. Claims on Appeal: 1-5, 7-9, and 11-17

As indicated above, claims 1-5, 7-9, and 11-28 are pending in this application and stand finally rejected in the final office action mailed July 30, 2008 ("the latest office action"). The rejections of claims 1-5, 7-9, and 11-17 are being appealed.

#### IV. STATUS OF AMENDMENTS

An amendment after the final rejection under 37 C.F.R. § 41.33(a) was filed on December 5, 2008.

This amendment was filed so as to comply with requirements of form set forth in the final office action and so as to put the application in better form for appeal. In particular, this amendment renumbered the inadvertent “second” claim 12 to be claim 13 so as to overcome an objection to having two separate claims both numbered as claim 12.

#### V. SUMMARY OF CLAIMED SUBJECT MATTER

The claimed subject matter relates to home networking and communications.

Independent claim 1 relates to an apparatus for data transfer (Fig. 2, described on page 15, line 6 through page 18, line 3). A plurality of nodes (HNS Boxes 206 and 207 in Fig. 2) are configured to be communicatively interconnected by both a first network which is a wireless home network (wireless network 109 in Fig. 2) and a second network which is a wired home network (home electrical wiring network 108 in Fig. 2). Secured data is transferred between at least two nodes of said plurality of nodes on said first network only if said at least two nodes also exist on said second network (page 6, lines 15-16; page 15, lines 4-5; page 17, lines 14-15; page 19, lines 7-9; original claim 1).

#### VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The following grounds of rejection are to be reviewed on appeal:

1. Rejection of claims 1-5, 7-9, and 13-17 under 35 U.S.C. § 102(e) as being anticipated by Ophir et al. (U.S. Patent Application Publication No. 2005/0034159); and
2. Rejection of claims 11-12 under 35 U.S.C. § 103(a) as being unpatentable over Ophir et al. in view of Pierce et al. (U.S. Patent No. 5,467,398).

## VII. ARGUMENT

Applicants respectfully traverse the aforementioned rejections of claims 1-5, 7-9, and 11-17 in the latest office action for the following reasons.

### A. Rejection of claims 1-5, 7-9, and 13-17 under 35 U.S.C. § 102(e) as being anticipated by Ophir et al.

Claims 1-5, 7-9, and 13-17 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Ophir et al. (U.S. Patent Application Publication No. 2005/0034159). This rejection is respectfully traversed.

Claim 1 recites as follows.

1. An apparatus for data transfer comprising:

a plurality of nodes that are configured to be communicatively  
interconnected by both a first network which is a wireless home  
network and a second network which is a wired home network,  
**wherein secured data is transferred between at least two nodes of  
said plurality of nodes on said first network only if said at  
least two nodes also exist on said second network.**

(Emphasis added.)

As seen above, claim 1 expressly recites, “**wherein secured data is transferred between at least two nodes of said plurality of nodes on said first network only if said at least two nodes also exist on said second network.**” (Emphasis added.) The latest office action asserts that paragraph 50 of Ophir et al. reads onto this claim limitation. Applicant respectfully traverses this assertion.

For convenience of reference, paragraph 50 and Fig. 2b of Ophir et al. are reproduced below.

[0050] Referring now to FIG. 2b, the construction of client network station 12, in the form of a "thin" set-top box, will now be described. Similar elements are referred to by the same reference numerals as in main network station 10 described above. As such coaxial cable CX is received by coaxial connector 23 at the input to matched splitter 27 in client network station 12. The lower frequency output of matched splitter 27 is not utilized by client network station 12 in this embodiment of the invention, considering that **the "thin" set-top box driving television set TV 2 receives only the 802.11 wireless protocol packets.** The low frequency output on line LF may be connected to another **coaxial connector 23', as shown in FIG. 2b, for example to communicate DOCSIS data to and from an optional cable modem,** in a combination data/video network as will be described in further detail below.

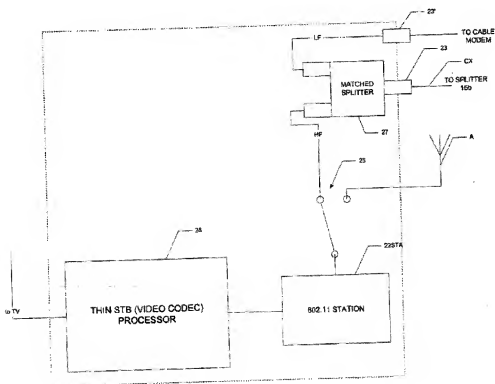


FIG. 2B

As explained in the office action, "Protected cable video transmitted over 802.11 network, DOCSIS packets transmitted over coax lines." (Latest office action, page 4, lines 3-4.)

However, applicants respectfully submit that, while wired and wireless networks are disclosed in this citation, there is no disclosure that “**secured data is transferred between at least two nodes of said plurality of nodes on said first network only if said at least two nodes also exist on said second network.**” In other words, no such conditional transfer of secured data is disclosed in Ophir et al. The claimed transfer is conditional in that the secured data is transferred on the first network only if the nodes exist on the second network.

Ophir et al. merely states that the “thin” set-top box receives only the 802.11 wireless protocol packets while the “optional” cable modem is used to communicate DOCSIS data. Neither the communication of 802.11 wireless protocol packets nor the communication of DOCSIS data is disclosed as being conditional upon the relevant nodes existing on another network in Ophir et al.

Therefore, applicant respectfully submits that claim 1 overcomes this rejection. Claims 2-5, 7-9, and 13-17 depend from claim 1. Hence, claims 2-5, 7-9, and 13-17 also overcome this rejection.

**B. Rejection of claims 11-12 under 35 U.S.C. § 103(a) as being unpatentable over Ophir et al. in view of Pierce et al.**

Claims 11-12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ophir et al. in view of Pierce et al. (U.S. Patent No. 5,467,398). This rejection is respectfully traversed.

Claims 11-12 depend from claim 1. Claims 11-12 are patentably distinguished over Ophir et al. for at least the reasons discussed above in relation to claim 1. Pierce et al. does not cure the above-discussed deficiency of Ophir et al. Therefore, applicant respectfully submits that claims 11-12 also overcome this rejection.

VIII. CONCLUSION

For at least the above reasons, applicants respectfully request that the rejections of claims 1-5, 7-9, and 11-17 be overturned.

Respectfully submitted,  
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## CLAIMS APPENDIX

### CLAIMS INVOLVED IN THE APPEAL

1. An apparatus for data transfer comprising:  
a plurality of nodes that are configured to be communicatively interconnected by both a first network which is a wireless home network and a second network which is a wired home network, wherein secured data is transferred between at least two nodes of said plurality of nodes on said first network only if said at least two nodes also exist on said second network.
2. The apparatus of claim 1 wherein unsecured data is freely transferred between said at least two nodes on said first network.
3. The apparatus of claim 1 wherein unsecured data is freely transferred between said at least two nodes on said second network.
4. The apparatus of claim 1 wherein said at least two nodes exist on said second network for the entire period of said data transfer across said first network.
5. The apparatus of claim 4 further including security negotiation for use of said first network wherein said security negotiation data is transferred between said at least two

nodes only over said second network.

7. The apparatus of claim 4 wherein said second network is a home electrical wiring network.

8. The apparatus of claim 4 further including at least one interface module for communicating with data resources.

9. The apparatus of claim 5 wherein said security negotiation further includes at least one authentication key.

11. The apparatus of claim 9 wherein said authentication key is periodically changed.

12. The apparatus of claim 9 wherein said authentication key is randomly changed.

13. The apparatus of claim 9 wherein said authentication key is established by one of the group consisting of the manufacturer, the service provider, the end user and a predetermined algorithm.

14. The apparatus of claim 1 wherein said wired home network has predetermined physical boundaries.

15. The apparatus of claim 1 wherein said wired home network is selected from the group comprising facility electrical wiring network, a home PNA telephone wiring network, a standard wired Ethernet network, and a coaxial cable network.

16. The apparatus of claim 14 wherein said wired home network further includes predetermined physical access points.

17. The apparatus of claim 16 wherein said physical access points include at least one selected from the group consisting of electrical outlets, phone jacks, and Ethernet jacks.

## EVIDENCE APPENDIX

There are no documents or items submitted under this section.

RELATED PROCEEDINGS APPENDIX

There are no documents or items submitted under this section.